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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/081,852	02/22/2002	Denise Crites Tears	17,519	3759
23556	7590	11/24/2004	EXAMINER	
KIMBERLY-CLARK WORLDWIDE, INC. 401 NORTH LAKE STREET NEENAH, WI 54956			ANDERSON, CATHARINE L	
		ART UNIT	PAPER NUMBER	
		3761		

DATE MAILED: 11/24/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/081,852	TEARS ET AL.
	<b>Examiner</b>	<b>Art Unit</b>
	C. Lynne Anderson	3761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 18 August 2004.  
 2a) This action is **FINAL**.                    2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-11 and 13-23 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) 10, 11 and 13-16 is/are allowed.  
 6) Claim(s) 1-3, 5-8, 17-21 and 23 is/are rejected.  
 7) Claim(s) 4, 9 and 22 is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | Paper No(s)/Mail Date. _____  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>7/9/04</u> . | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|   | 6) <input type="checkbox"/> Other: _____                                    |

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-3, 5, 17-18, and 23 are rejected under 35 U.S.C. 102(e) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Mizutani (6,371,948).

With respect to claims 1, and 2, Mizutani discloses an absorbent article, as shown in figure 2, comprising an absorbent 22 enclosed by a wrapper 21. The wrapper extends laterally outward to form a pair of fringes 29 which are biased upward to form a pair of upstanding side walls, as shown in figure 2. The fringes 29 run the entire length of the article, as shown in figure 1. The fringes 29 comprise doubled regions of the wrapper 21 which provides a fringe width. The wrapper 21 is attached together across the fringe width, as shown in figure 2, with adhesive, as disclosed in column 2, lines 55-60.

Mizutani remains silent as to the dimensions of the article, but shows the fringes 29 extending beyond the absorbent 22 by about half the lateral dimension of the absorbent 22. An article of such construction having fringes of less than

10 mm would therefore have an overall lateral dimension of only about 20 mm.

Absorbent articles of the type disclosed are considerably larger than 20 mm, and therefore the fringes disclosed by Mizutani must inherently be greater than 10 mm. In the alternative, it would have been obvious to one of ordinary skill in the art at the time of invention to construct the article of Mizutani with fringes extending at least 10 mm, since in order to function in their intended purpose, an absorbent article must have a lateral dimension of greater than 20 mm.

With respect to claim 3 and 18, the article further comprises an impediment layer 23 positioned below the absorbent 22 and enclosed in the wrapper 21, as shown in figure 2. The impediment layer 23 comprises a liquid-impermeable film, as disclosed in column 3, lines 7-11, and has a width in the z-direction that is less than the width of the absorbent 22, as shown in figure 2.

With respect to claim 5, the wrapper 21 is C-folded such that the first and second side edges overlap, as shown in figure 2.

With respect to claims 17 and 23, the article further comprises attachment means in the form of bonds across the lower exterior surface of the wrapper 21 configured to attach the article to a primary absorbent undergarment 17, as disclosed in column 2, lines 65-67.

#### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

- (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which

said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 6 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mizutani (6,371,948) as applied to claim 1 above.

Mizutani discloses all aspects of the claimed invention with the exception of the side edges of the wrapper being abutted or space apart. It would have been obvious to one of ordinary skill in the art at the time of invention to have the side edges of the wrapper being abutted or space apart rather than overlapped, since it has been held that rearranging parts of an invention involves only routine skill in the art. *In re Japikse*, 86 USPQ 70.

Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Mizutani (6,371,948) and applied to claim 1 above, and in view of Rosseler et al. (5,516,567).

Mizutani discloses all aspects of the claimed invention but remains silent as to the material comprising the wrapper.

Rosseler discloses the use of a spunbond nonwoven material having a basis weight of 0.65 osy, as described on column 5, lines 39-42, as a suitable material for forming a wrapper of an absorbent article.

It would therefore be obvious to one of ordinary skill in the art at the time of invention to construct the wrapper of Morita from a spunbond material having a basis weight of about 0.65 osy, as taught by Rosseler, to provide the article with a suitable topsheet.

Claims 19-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mizutani (6,371,948) and applied to claim 17 above, and in view of Faulks et al. (5,356,403).

Mizutani discloses all aspects of the claimed invention but remains silent as to the relative percentages of superabsorbent in the layers of the absorbent.

Faulks discloses an absorbent article having a first absorbent layer 34 and a second absorbent layer 36, as shown in figure 4. The first absorbent layer 34 comprises a higher percentage of superabsorbent than the second absorbent layer 36, as disclosed in column 8, lines 11-13. Having a higher percentage of superabsorbent in the first absorbent layer 34 provides the article with greater leakage protection, as disclosed in column 10, Table 1.

It would therefore be obvious to one of ordinary skill in the art at the time of invention to provide the article of Mizutani with two absorbent layers, the first layer comprising a higher percentage of superabsorbent than the second, as taught by Faulks, to provide the article with greater leakage protection.

#### ***Allowable Subject Matter***

Claims 10-11 and 13-16 are allowed.

Claims 4, 9, and 22 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

#### ***Response to Arguments***

Applicant's arguments filed 18 August 2004, with respect to the rejection(s) of claim(s) in view of Morita (5,704,928) have been fully considered

and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of Mizutani (6,371,948).

***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to C. Lynne Anderson whose telephone number is (571) 272-4932. The examiner can normally be reached on Monday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Larry Schwartz can be reached on (571) 272-4390. The

fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

CMA  
cla  
November 21, 2004

  
Larry I. Schwartz  
Supervisory Patent Examiner  
Group 3700